

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PCS MILLWORK, INC.,)	
)	DIVISION ONE
Respondent,)	
)	No. 62664-7-I
v.)	
)	
JACOB D. LORAN and KATRINA)	UNPUBLISHED OPINION
LOUISE LORAN, husband and wife,)	
and their marital community thereof,)	
d/b/a J D LORAN CONSTRUCTION, a)	
sole proprietorship; and GREAT)	
AMERICAN INSURANCE COMPANY)	
OF NEW YORK,)	
)	
Appellants.)	FILED: July 27, 2009
_____)	

Dwyer, A.C.J. — Jacob Loran¹ appeals from an order granting summary judgment against him for the unpaid balance on his open credit account for building materials with PCS Millwork. Loran contends that the trial court erred because there were issues of fact regarding the accuracy of PCS's calculation of the amount owed. But Loran's argument depends on his contention that the trial court erred in considering reply materials to which he did not object or move to strike. Confining our review to issues called to the attention of the trial court, as

¹ Consistent with the briefing, this opinion refers to the defendants Jacob D. Loran, his marital community, his sole proprietorship construction company, and his bonding company collectively as Loran.

we must, we consider the reply materials and conclude there was no genuine issue of material fact about the amount actually owed. Accordingly, we affirm.

Facts

In May 2006, Loran entered into a written credit agreement with PCS to purchase building materials on an open account. In April 2008, PCS filed suit against Loran claiming he was in default in the amount of \$14,866.42, and was therefore liable under the agreement for interest, costs, and attorney fees.

PCS eventually moved for summary judgment. PCS included in its summary judgment materials a declaration by the PCS credit manager, to which was attached a two-page statement of Loran's account covering the period between March 2007 and May 2008.

Loran responded with a declaration in which he did not deny purchasing products on the account, but contested the accuracy of PCS's calculations. He asserted that he had paid two particular checks during the relevant period, which PCS's credit manager had not included on the statement. He identified each check by date and bank number. Loran further stated that it appeared to him that the PCS ledger started with an interest charge, which would have been incorrect because he had made earlier payments, for which he also provided specific information.²

² Loran also stated that he believed some of his customers had paid PCS directly, but he acknowledged that he was still trying to collect documentation to support that claim and provided no particularized information. The record does not show that he ever supplemented this claim with any further information. We agree with PCS that this particular claim was conclusory and speculative and therefore failed to raise a question of fact regardless of whether PCS's reply materials were considered.

Counsel for PCS filed a reply that included a detailed seven-page computerized payment history ledger for Loran's account covering the entire period of the agreement. The ledger showed that the two checks Loran referred to in his declaration were accounted for and that the item Loran thought could be an interest charge was simply another charge for materials provided.

In an unreported hearing, the trial court granted PCS's motion for summary judgment. Consistent with RAP 9.12, the written order granting summary judgment lists the materials considered by the court. PCS's reply is included on the list.

Loran appeals.

Analysis

"We engage in a de novo review of a ruling granting summary judgment. Thus, we engage in the same inquiry as the trial court." Green v. Normandy Park Riviera Section Cmty. Club, Inc., 137 Wn. App. 665, 681, 151 P.3d 1038 (2007) (citation omitted), review denied, 163 Wn.2d 1003 (2008). "Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law." Green, 137 Wn. App. at 681 (citing CR 56(c); Hutchins v. 1001 Fourth Ave. Assocs., 116 Wn.2d 217, 220, 802 P.2d 1360 (1991)). We construe all reasonable inferences from the evidence in favor of the nonmoving party.

Kennedy v. Sea-Land Serv., Inc., 62 Wn. App. 839, 857, 816 P.2d 75 (1991).

Green, 137 Wn. App. at 681.

Loran does not dispute that the detailed loan history ledger resolved the concerns raised in his declaration about the accuracy of PCS's accounting. He contends, however, that the trial court should not have considered that ledger because it was merely attached to counsel's unsworn reply, and therefore did not constitute admissible evidence based on personal knowledge. See CR 56(e).

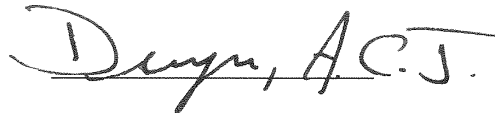
Had Loran brought a motion to strike the detailed ledger provided with PCS's reply, we would apply a de novo standard of review to the trial court's ruling as an evidentiary ruling made in conjunction with the summary judgment order. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). But that standard of review does not affect the rule that an evidentiary objection must be made in the trial court to preserve the issue for appeal. Rather, under the special rule regarding review of summary judgment proceedings "the appellate court will consider only evidence and issues called to the attention of the trial court." RAP 9.12 (emphasis added).³ "It is our duty to review evidentiary rulings made by the trial court; we do not ourselves make evidentiary rulings." Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC, 139 Wn. App. 743, 756, 162 P.3d 1153 (2007).

³ In contrast, when an argument pertains to an insufficiency of proof rather than, as here, an issue of the admissibility of the proffered evidence, no objection in the trial court is required. See Parkin v. Colocousis, 53 Wn. App. 649, 652, 769 P.2d 326 (1989).

Here, the record does not show, and Loran does not contend, that he moved to strike PCS's reply materials or otherwise objected to their consideration in the trial court. Loran's failure to object in the trial court means the admissibility of the ledger is not an issue before us. Because the trial court considered the ledger and made no ruling on its admissibility to which error has been assigned, the ledger is properly before this court. Jacob's Meadows, 139 Wn. App. at 756. And because the ledger demonstrates that there was no issue of material fact, summary judgment was proper.⁴

PCS requests attorney fees. The credit agreement provides for fees to the prevailing party in litigation arising out of the agreement. We accordingly award PCS reasonable fees on appeal in an amount to be determined by a commissioner of this court, subject to PCS's compliance with RAP 18.1.

Affirmed.

A handwritten signature in black ink, appearing to read "Dwyer, A.C.J.", with a horizontal line underneath the name.

WE CONCUR:

⁴ Because of our conclusion in this regard, it is unnecessary to address the alternative bases for affirming that PCS also argues, including the claims that the detailed ledger was sufficiently authenticated by the existing record to be admissible, that consideration of the ledger, if error, was harmless, and that Loran's declaration was not sufficiently detailed to raise a question of fact on any issue in any event.

Appelwick J

Leach, J.